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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2868/2016*, **

Communication submitted by:	S.A. et al. (represented by counsel, Andrea Saccucci and Massimiliano Massara)
Alleged victims:	The authors
State party:	Greece
Date of communication:	24 June 2016 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 24 November 2016 (not issued in document form)
Date of adoption of decision:	10 November 2017
Subject matter:	Involuntary participation in exchange of government bonds
Procedural issues:	Exhaustion of domestic remedies; victim status
Substantive issues:	Right to a fair trial; right to equal protection before the law; right to an effective remedy
Articles of the Covenant:	2 (3), 4, 14 and 26
Articles of the Optional Protocol:	1 and 5 (2) (b)

1.1 The authors of the communications are 42 persons who are nationals of Austria, Italy and Slovakia. The authors were holders of Greek government bonds at the time of the enactment of the 2012 Greek Bondholder Act, which amended the conditions governing the bonds. In an effort to reduce the State party's public debt, bondholders were invited to exchange their bonds for other debt instruments of lesser value. The authors did not accept the invitation. The Bondholder Act provided that if at least two thirds of private bondholders accepted the invitation, the exchange would also apply to the remaining bondholders who did not accept it. That majority was obtained and the authors' bonds were cancelled from the market and replaced by new securities worth 53.5 per cent less in terms of nominal value. The authors claim that their forcible participation in the exchange

* Adopted by the Committee at its 121st session (16 October-10 November 2017).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval. Pursuant to rule 90 of the Committee's rules of procedure, Photini Pazartzis did not participate in the examination of the present communication.

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amounted to a violation of their rights under article 26, article 2 (3) read in conjunction with article 14, and article 4 of the Covenant. The authors are represented by counsel.

1.2 On 20 March 2017, pursuant to rule 97 (3) of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to grant the State party's request for the admissibility of the communication to be examined separately from the merits.

The facts as submitted by the authors

2.1 The authors held Greek government bonds governed by Greek law prior to 9 March 2012, when the conditions governing the bonds were amended. As bondholders, they would have been entitled to receive, at maturity, the face value of their bonds. They note that in April 2010, the government debt was downgraded to a "junk bond status", a high-yield bond that is rated below investment grade because of higher risk of default or other adverse credit events. On 2 May 2010, the European Union and the International Monetary Fund (IMF) agreed on a €110 billion bailout loan for Greece, conditional on the implementation of austerity measures. In October 2011, eurozone leaders agreed to offer a second €109 billion (later raised to €130 billion) bailout loan to Greece, conditional not only on the implementation of another austerity package, but also on the acceptance by private creditors of an overall restructuring of the Greek sovereign debt, the so-called "private sector involvement" operation, with a view to reducing the debt burden from a forecasted 198 per cent of the gross domestic product in 2012 to 120.5 per cent by 2020.

2.2 The main private holders of government bonds, which were banks, funds and other institutional investors, agreed to accept an exchange offer with a "haircut" (a decrease in the nominal value of the bonds and the repayment mode) of 53.5 per cent of the face value between owned bonds and new bonds, which were issued with a maturity of between 11 and 30 years and lower average yields of 3.65 per cent.

2.3 Only international institutional investors, such as banks and other credit institutions that held the majority of the Greek debt, were involved in negotiating the terms of the haircut and the compensation they would receive in return for their economic loss and voluntary participation in the plan. Individuals were not called to participate in the negotiations or informed about their development.

2.4 On 23 February 2012, the Greek Parliament approved the 2012 Greek Bondholder Act, introducing a legal framework aimed at amending the "eligible titles" (the bonds in question) according to special procedures prescribed in the Act. The Act provided for the introduction and activation of collective action clauses, stipulating that the amendments the Government proposed to eligible titles would be considered approved by the bondholders if: (a) holders of at least 50 per cent of all the aggregate outstanding principal amount of all eligible titles accepted the modification process; and (b) at least two thirds of the participating principal amount consented to the amendments. If the offer was accepted, all eligible titles would be automatically cancelled by the registration of the new titles, and any right or obligation derived from the former titles would be extinguished. The Act stipulated that the provisions therein, aimed at protecting the supreme public interest, were mandatory rules, immediately effective and prevailing over any contrary legislation, regulation or agreement.

2.5 On 24 February 2012, the Ministerial Council authorized the Public Debt Management Agency to issue an invitation for participation in the private sector involvement operation. The terms of the invitation were made public in a press release issued by the Ministry of Finance on the same date. On 9 March 2012, the Government announced that 85.8 per cent of private holders of bonds governed by Greek law had tendered their bonds for exchange or consented to the proposed amendments. Having achieved the required majority, the Government was able to activate the collective action clauses so that the remaining 14.2 per cent were also affected, involuntarily, by the proposed amendments to the eligible titles.

2.6 The authors did not tender their bonds for exchange or consent to the amendments proposed by the Government in its invitation of 24 February 2012. However, in accordance with the Bondholder Act and following the decision of the Government to activate the

collective action clauses under the Act, the bonds they held were cancelled from the market and all related rights and obligations were extinguished. In exchange, they received new bonds governed by English law. Due to the activation of the collective action clauses and under the terms of the involuntary exchange, they suffered a substantial loss on their investment, amounting to much more than the 53.5 per cent haircut in the face value of the bonds. Furthermore, the new bonds have a much longer maturity compared to the original bonds they had held. They have therefore suffered an economic loss that may amount to 70 per cent of the value of their original investment.

2.7 The authors do not have access to an effective domestic remedy within the Greek legal system, or elsewhere, for the purpose of challenging the compatibility of the retroactive introduction and application of the collective action clauses with their Covenant rights. They refer to the Committee's jurisprudence in *Länsman et al. v. Finland*[1] and note that authors are not required to exhaust domestic remedies where the jurisprudence of the highest domestic tribunal has decided the matter at issue, thereby eliminating any prospect of success of an appeal to the domestic courts. According to the Committee's jurisprudence, authors are not required to challenge an action that is clearly authorized by domestic legislation.[2] The authors note that the collective action procedure was introduced retroactively under the 2012 Bondholder Act and was applicable to all government bonds governed by Greek law, allowing the State party to extend the proposed amendments to eligible titles if approved by two thirds of the bondholders. The violations claimed under article 26 of the Covenant therefore arose out of a systematic defect in domestic law that affected thousands of bondholders. The decision to impose the proposed amendments on the minority of bondholders who did not consent to them was taken without the adoption of a formal act setting out the reasons that would have made it imperative to extend the private sector involvement operation through the activation of the collective action clauses. Furthermore, the Greek Parliament stated that the application of the collective action procedure was necessary in order to safeguard the supreme public interest and declared that the provisions in question prevailed over any contrary legislation. The retroactive introduction of the collective action procedure was intended as a derogatory measure impeding the rights of the bondholders.

2.8 In 2012, several bondholders of Greek nationality brought a number of cases before the Council of State[3] against the Government decision to apply the collective action clauses and to carry out the bond exchange pursuant to the Bondholder Act. On 21 March 2014, the Court ruled on the first set of petitions and found that the provisions of the Bondholder Act and the decision of the Government to apply the collective action clauses did not contravene the constitutional principle of equality and were not in breach of the right to property or the prohibition of discrimination under the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights). The authors did not have access to any judicial remedy in Greece that would have had any reasonable prospect of success and would have led to a finding of a violation of their rights as protected by the Covenant and would have afforded the authors an adequate form of compensation. Given that the Council of State has held that the decision to apply the collective action clauses was taken in conformity with the mandatory provisions of the Bondholder Act and that those provisions were enacted with a view to safeguarding the supreme public interest and were not contrary to the Constitution, any further attempt to challenge the retroactive introduction of the collective action clauses and/or its application would be bound to fail.

2.9 On 17 and 19 September 2014, the authors submitted applications before the European Court of Human Rights claiming a violation of their right to protection of property and non-discrimination. On 9 January 2015, they were notified that their applications had been found to be inadmissible in a single-judge decision with no reasons

[1] Communication No. 511/1992, Views adopted on 26 October 1994.

[2] The authors refer to communications No. 560/1993, *A v. Australia*, Views adopted on 3 April 1997, No. 518/1992, *Sohn v. Republic of Korea*, Views adopted on 19 July 1995, No. 786/1997, *Johannes Vos v. Netherlands*, Views adopted on 29 July 1999, and No. 550/1993, *Faurisson v. France*, Views adopted on 8 November 1996.

[3] The Supreme Administrative Court of Greece.

specified. They were informed only that the admissibility criteria set out in articles 34 and 35 of the European Convention on Human Rights had not been met.

The complaint

3.1 The authors claim that the forcible exchange of the Greek government bonds held by private holders in the context of the private sector involvement operation was carried out in a discriminatory manner, in violation of their rights under article 26 of the Covenant as: (a) not all foreign bondholders were subject to the activation of the collective action clauses on an equal footing; and (b) the State party failed to treat differently persons whose situations were significantly different without any objective and reasonable justification.

3.2 The authors claim that they have been affected by discriminatory measures in violation of their property rights. They argue that as holders of government bonds, they had acquired an entitlement to the repayment of the nominal amount of the bonds at the maturity date, as well as to the payment of accrued interests according to the terms laid down in the regulation of each series of bonds. They argue that that they have been discriminated against vis-à-vis a number of national and foreign investors, given that:

(a) They were forced into the private sector involvement operation against their will and were treated less favourably than official investors such as the European Central Bank, national central banks, central banks of foreign States or other State entities whose holdings were not subject to any debt restructuring;

(b) As private holders of government bonds governed by Greek law, they were treated less favourably than private holders of government bonds regulated by foreign law, as the latter were not subject to the compulsory activation of the collective action clauses;

(c) They were treated less favourably than other holders of government bonds whose holdings were not subject to the renegotiation under the terms of the invitation memorandum;[4]

(d) They were treated less favourably than other holders of government bonds that were subject to more favourable conditions within the framework of the private sector involvement operation. The authors note that holders in the United States of America received a 15 per cent repayment in cash instead of European Financial Stability Facility payment notes with a one to two year maturity;[5]

(e) The Greek authorities failed to make any distinction between the different types of bondholders, therefore treating in the same manner situations that were profoundly different. The authors received the same treatment as the institutional private investors who held the vast majority of the aggregate face value of the Greek government bonds. However, those investors had the opportunity to have a major impact on the private sector involvement operation as they negotiated the haircut. Furthermore, they could easily mediate their loss by purchasing further Greek government bonds on the market and could easily keep the new bonds under the swap until their final maturity without being forced to sell them on the market at a very reduced price. The authors argue that there was not a compelling need to activate the collective action clauses in respect of them and that the imposition of the private sector involvement operation on private bondholders had disproportionately prejudicial effects on a particular group of bondholders, namely those who did not participate in the negotiation of the private sector involvement operation and did not express their consent to it, while at the same time bringing significant advantage to those major holders in the private sector who accepted the debt restructuring process. The authors therefore argue that treating equally bondholders who were in very different

[4] The authors refer to a hedge fund which they claim held about 5 per cent of the Greek debt that was not subject to renegotiation under the terms of the invitation memorandum. The authors claim that the hedge fund was paid over €400 million in May 2012 by the Government of Greece.

[5] Bondholders who held government bonds governed by Greek law received as one part of the swap under the collective action clauses, private sector involvement payment notes issued by the European Financial Stability Facility governed by English law. Bondholders in the United States of America did not receive European Financial Stability Facility notes as part of the swap, but were to be paid in cash proceeds realized from the sale of the European Financial Stability Facility notes they would otherwise have received.

situations constitutes discrimination, as it did not pursue a legitimate aim and was not based on an objective and legitimate ground.

3.3 The authors also claim a violation of their rights under article 2 (3) (a) and (b) read in conjunction with article 14 of the Covenant, as they claim that they do not have access to an effective remedy within the State party legal system, or elsewhere, which would enable them to address the violations of their rights under the Covenant. They claim that any ordinary judicial remedy at the domestic level would not allow them to challenge the compatibility of the collective action clauses provided for by the Bondholder Act with their Covenant rights.

3.4 The authors also claim a violation of article 4 of the Covenant as the State party adopted extraordinary measures derogating from its obligations under the Covenant without complying with the requirements laid down therein. They note that the Greek authorities may assert that the private sector involvement operation should be considered as an extraordinary measure that was imperative and unavoidable in order to successfully reduce the sovereign debt and receive international financial assistance. However, if that is the case, the authors submit that a situation of serious economic crisis or financial instability has to date never been considered under human rights treaties for the purpose of resorting to derogatory clauses and that it is questionable whether the situation in the State party can be qualified as strictly required by the exigencies of the situation. They argue that the application of the collective action clauses against the minority of the bondholders was not essential for the success of the private sector involvement operation, as the high level of voluntary participation was sufficient to ensure the foreseen substantial reduction of the debt level. The authors also argue that the State party failed to fully inform the Secretary-General of the United Nations of the contested derogatory measures and the grounds on which they were based.

3.5 The authors request the Committee to: (a) establish that the State party has breached its obligations under article 26 of the Covenant; (b) establish that the State party has breached its obligations under article 2 (3), read in conjunction with article 14 of the Covenant; (c) establish that the State party has breached its obligations under article 4 of the Covenant; and (d) order the State party to undertake appropriate steps in order to ensure the effective enjoyment of the authors' rights to equal protection of the law against discriminatory deprivation of property, to an effective remedy, to equal access to the courts and to provide adequate relief.

State party's observations on admissibility

4.1 On 24 January 2017, the State party submitted its observations on the admissibility of the communication. The State party provides background information on the global financial crisis in 2008, Greek government bonds, the economic factors that led Greece to engage in the bond exchange, collective action clauses and the Bondholder Act. It notes that, despite the financial assistance provided by the European Union and IMF in May 2010, the financial situation in the State party continued to deteriorate. In June 2011, the finance ministers of the eurozone States agreed that further measures including additional funding from official and private sources and private sector involvement were necessary to avoid a default. On 26 October 2011, the eurozone Heads of State agreed on the terms for the private sector involvement required for the continued support to the State party by the eurozone member States. The agreement called for a write-off of approximately 50 per cent of the aggregate principal amount of government bonds held by private creditors, to be implemented in early 2012. On 21 February 2012, the finance ministers of the eurozone States announced an increase in the financial package for Greece, in which they acknowledged the common understanding reached with the private sector on the general terms of the private sector involvement operation, providing for a nominal haircut of 53.5 per cent of the face value of the Greek debt. That financial support was conditioned upon the implementation of the debt exchange.

4.2 The State party notes that information on the procedural details of the private sector involvement operation was published on an official website, on which the invitations to participate in the operation and all other relevant material, such as the legislative framework and announcements, were posted. In addition, credit institutions and other custodians undertook to notify their customers according to the general principles governing the legal relationship between the credit institutions and their customers of the

process. The State party argues that the high participation rate in the operation reveals that the trustees of the investors informed the latter of the operation, as provided for in the agreements entered into between them.

4.3 The State party submits that the communication is inadmissible under article 1 of the Optional Protocol as the authors have not established victim status, showing that they were personally and directly affected by the involuntary bond exchange in March 2012. The State party argues that, in view of the legal nature of bonds and their functioning as bearer, book-entry, secondarily tradeable and transferable securities, the State party does not and cannot know who holds the securities it issues and which transactions are made thereon by each holder. The State party notes that it is therefore not in a position to know the ultimate holder of each security; such information is available to the credit institution that sells the securities, which is the depositary of every investor. Specifically, the State party submits that the authors have not established that they were bondholders of the securities that were affected by the bond exchange, or their participation or non-participation in the voting process. The State party submits that, in order to establish that fact, the authors must submit certificates containing the exact features of their securities, namely the International Securities Identification Number, date of issuance, interest rate and quantity, as well as evidence of possession of such securities, such as date of purchase and purchase price, and the content of any orders concerning their participation or non-participation in the voting process.

4.4 The State party also submits that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol. The State party notes that the authors could have challenged the contested administrative acts before the Council of State with a petition for annulment of the acts, but failed to do so. The State party notes that under that procedure, the Council of State may assert lack of competence, infringement of an essential procedural requirement, violation of the law or abuse of discretionary power. An application before the Council of State is admissible if it is instituted within 60 days of the notification of the act to the applicant, or of its publication if the law provides for that, or in the absence thereof, of the day on which the act came to the applicant's knowledge. That deadline is extended to 90 days when the applicant is residing abroad. The deadline started running on 9 March 2012 with the publication in the Official Gazette of Ministerial Decision No. 2/20964/0023A of 9 March 2012 of the Deputy Minister of Finance. The State party notes that the debt reduction through the exchange of bonds was widely reported in both the domestic and international media and that all parties concerned would therefore have had the opportunity to be immediately informed of the process. The State party also notes that, in an application for annulment before the Council of State, an applicant can allege infringement of his or her rights as protected by the Constitution, the European Convention on Human Rights or the Covenant. The State party submits that consequently, there is no doubt that a petition for annulment constitutes an effective remedy. It notes that there were foreign residents who, within the prescribed deadline, lodged such petitions before the Council of State.

4.5 The State party argues that the authors could therefore have lodged a petition before the Council of State, addressing their alleged claims under the Covenant. By failing to do so, they deprived the Council of State of the opportunity to examine the alleged violations. The State party notes that the first judgment of a plenary session of the Council of State was rendered well after the expiry of the time limit for filing a petition for annulment, and submits that therefore, at the time of the expiry of the deadline, the authors had access to an effective remedy. It argues that a person who has not lodged a petition before the Council of State has accepted the lawfulness of the procedure.

4.6 The State party notes that, in a letter dated 16 January 2017, the Registrar of the European Court of Human Rights confirmed that the authors' application before the Court had been declared inadmissible on the grounds of non-exhaustion of domestic remedies, as the authors had not submitted a petition for annulment before the Council of State. The State party also notes that in *Mamatas and others v. Greece*,[6] the Court found the applications from applicants who had not filed petitions before the Council of State to be

[6] See European Court of Human Rights, applications Nos. 63066/14, 64297/14 and 66106/14, judgment of 21 July 2016.

inadmissible, as at the time they chose not to file a petition, the applicants could not have foreseen the outcome of the procedure.

Authors' comments on the State party's observations

5.1 On 27 February 2017, the authors submitted their comments on the State party's observations. The authors submit that they have established victim status. They note that, together with their complaint, they submitted statements from their credit institutions, which include the following information: (a) the exact features of the securities, including the International Securities Identification Number, date of issuance, interest rate and quantity; (b) evidence of possession of those securities, such as the date of purchase and purchase price; (c) a declaration by their depositary bank that they have not given any order concerning their participation in the voting process; and (d) evidence that they held the securities on 9 March 2012, when the private sector involvement operation was enforced.

5.2 As for the exhaustion of domestic remedies, the authors refer to the Committee's jurisprudence and note that there is no need to exhaust domestic remedies if there is no reasonable prospect of redress or if the jurisprudence of the highest domestic tribunal has decided the matter at issue, thereby eliminating any prospect of success on appeal. The authors note that the Council of State has rejected the petitions for annulment by other bondholders who were in the same situation as the authors and has found that the Bondholder Act and the activation of the collective action clauses were in full conformity with the Constitution and international human rights obligations. The authors argue that the question of whether domestic remedies have been exhausted should be assessed at the time the Committee examines the admissibility of the complaint.

5.3 The authors note the Committee's jurisprudence according to which authors are not required to challenge an action of the State party which is clearly authorized by domestic legislation.[7] The authors argue that the activation of the collective action clauses was authorized by the Bondholders Act and that the clauses were intended to be mandatory rules that were immediately effective and were supposed to prevail over any contrary legislation. The authors also argue that the political and economic framework in which the alleged violations took place also has to be taken into account. They argue that they had to face the expropriation of their property on the alleged grounds that the State party was facing a state of emergency. They argue that under those exceptional circumstances, they were not in a position to challenge the actions of the State party.

5.4 As regards the authors' application before the European Court of Human Rights, the authors note that, unlike the State party, they did not receive any information from the Court on the grounds for the Court's inadmissibility decision. The authors argue that, unlike the Greek applicants in *Mamatas and others v. Greece*, they, as non-Greek citizens, did not have the same access to the Greek courts as Greek citizens. They note that, although the Bondholder Act was written in English, it was published in the Official Gazette of Greece. The authors also argue that they were not notified of the invitation memorandum and only found out about it once it was too late to contact a Greek attorney. They argue that, given those exceptional circumstances, they cannot be considered to be in the same position as the Greek applicants in the *Mamatas* case.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

[7] See footnote 3 above.

6.3 The Committee notes the State party's argument that the communication should be considered inadmissible on the grounds of non-exhaustion of domestic remedies, as the authors did not challenge the Bondholder Act and the activation of the collective action clauses before the Council of State. The Committee also notes the State party's argument that under that procedure, the Council of State can assess whether an applicant's rights under the Covenant, as well as other human rights treaties, have been violated. The Committee further notes the State party's argument that, under the same procedure, the Council of State may also assess whether the challenged administrative act is in violation of essential procedural requirements, in violation of the law or constitutes an abuse of discretionary power. The Committee notes the authors' argument that they did not have access to an effective remedy in the State party that would have had any reasonable prospect of success and would have led to a finding of a violation of their rights as protected by the Covenant. The Committee also notes the authors' argument that the Council of State had, on 21 Mach 2014, ruled on petitions brought by other bondholders before the Council and had found that the provisions of the Bondholder Act and the decision of the Government to activate the collective action clauses did not contravene the constitutional principle of equality and were not in breach of the right to property or the prohibition of discrimination under the European Convention on Human Rights. The Committee further notes the authors' argument that, as the activation of the collective action clauses was clearly authorized by the Bondholders Act, it would have been futile to challenge the activation of the clauses before the Council of State.

6.4 The Committee recalls its jurisprudence that, although there is no obligation to exhaust domestic remedies if they have no chance of being successful, authors of communications must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.[8] The Committee also recalls its jurisprudence that, when the highest domestic court has ruled on the matter in dispute in a manner eliminating any prospect that a remedy before domestic courts may succeed, authors are not obliged to exhaust domestic remedies for the purposes of the Optional Protocol.[9] The Committee observes that, in the present case, the authors could have filed an application for annulment before the Council of State claiming a violation of their rights under the Covenant. The Committee notes that the invitation and the terms for participation in the private sector involvement operation were made public in a press release issued by the Ministry of Finance on 24 February 2012, and that information on the operation was posted on a specific website, while credit institutions undertook to inform their customers about the operation. It also notes the State party's argument that the operation and the bond exchange was widely reported in the domestic and international media. The Committee further notes that, at the time the deadline for the filing of a petition for annulment expired, the Council of State had not ruled on the matter in dispute by any prior judgment. In these circumstances, the Committee is of the view that, by not filing an application for annulment before the Council of State, the authors failed to exhaust available domestic remedies. The Committee therefore considers that the communication is inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

6.5 Having thus concluded, the Committee will not separately examine the admissibility grounds under article 1 of the Optional Protocol.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the authors.

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[8] See, inter alia, communications No. 2072/2011, *V.S. v. New Zealand*, decision adopted on 2 November 2015, para. 6.3; No. 1511/2006, *García Perea and García Perea v. Spain*, decision adopted on 27 March 2009, para. 6.2; and No. 1639/2007, *Zsolt Vargay v. Canada*, decision adopted on 28 July 2009, para. 7.3.

[9] See, inter alia, communication No. 1095/2002, *Gomariz Valera v. Spain*, Views adopted on 22 July 2005, para. 6.4.